

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEFFREY ANCHOR, et al.,

Plaintiffs,

04-CV-0300S(Sr)

v.

DIAZ INTERMEDIATES CORPORATION, et al.,

Defendants.

REPORT, RECOMMENDATION AND ORDER

This case was referred to the undersigned by the Hon. William M. Skretny, pursuant to 28 U.S.C. § 636(b)(1), for all pretrial matters and to hear and report upon dispositive motions. Dkt. #94.

The parties have agreed to settle this matter for a sum of \$256,000 and the plaintiffs have provided defendants with general releases. Dkt. #184-1, ¶¶ 2-3.

Currently before the Court is plaintiffs' motion for disbursement of settlement funds and approval of costs and attorneys' fees. Dkt. #184. In support of the motion, counsel for plaintiffs affirms that each of the 126 plaintiffs executed retainer agreements agreeing to reimburse counsel for costs and disbursements and to pay one-third of the remaining settlement funds as attorneys' fees. Dkt. #184, ¶ 7. Plaintiffs'

counsel has filed a spreadsheet delineating costs and disbursements of \$39,108.02 incurred by Knauf & Shaw and \$7,727.23 incurred by Lippes & Lippes. Dkt. #184-2. Plaintiffs' counsel has also provided to the Court, *in camera*, a spreadsheet delineating the details of each plaintiff's claim, *to wit*, personal injury, real and personal property damage, economic loss and loss of quality of life, as well as multiple letters from various plaintiffs expounding upon these damages. Dkt. #184, ¶¶ 4-5.

Upon review of the information submitted in support of the motion, it is recommended that the settlement funds be released to plaintiffs' counsel within seven days of the adoption of this Report, Recommendation and Order and distributed as follows:

Knauf & Shaw	\$39,108.02
Lippes & Lippes	\$7,727.23
Richard J. Lippes & Associates	\$69,714.61
Plaintiffs	\$139,450.14

Specifically, it is recommended that the individual plaintiffs receive the following distributions, with plaintiffs' counsel undertaking responsibility for notification and payment of any portion of the settlement funds which Medicare/Medicaid deems reimbursable by the 26 plaintiffs who are Medicare/Medicaid eligible:

Anchor, Alicia	\$650.12
Anchor, Jeffrey	\$845.15
Anchor, Vanessa	\$910.16
Anderson, Jennifer	\$975.18
Anderson, Liam	\$975.18
Anderson, Shawn	\$975.18

Barber, Linda L.	\$1,170.21
Barber, Paul	\$910.16
Baron, Geraldine C.	\$1,105.20
Bell, Barbara A	\$845.15
Billotti, Joanne	\$1,495.27
Blake, Lauren	\$975.18
Blake, Robert	\$1,040.19
Carpenter, David L.	\$975.18
Carpenter, Jennifer	\$780.14
Carpenter, Susan L.	\$845.15
Catlin, Bernadette	\$2,275.41
Catlin, Denise S.	\$1,430.26
Catlin, Elyse	\$1,105.20
Catlin, Geoffrey	\$1,105.20
Catlin, Renee	\$1,300.23
Catlin, Richard E.	\$2,015.36
Catlin, Stephanie	\$1,105.20
Catlin, Thomas E.	\$1,625.29
Christopher, Margaret (Dec.)	\$520.09
Dann, Kevin	\$1,105.20
Dann, Patricia	\$2,080.38
Dann, Patrick	\$1,820.33
Dean, Nolan C.	\$975.18
DelFave, Susan	\$715.13
DeMasio, Geneva	\$1,495.27
Dominguez, Deborah	\$910.16
Dominguez, Erwin	\$715.13
Fleischauer, Bonnie	\$1,040.19
Flow, Diana L.	\$1,560.28
Flow, Jennifer aka Jennifer Dunn	\$1,040.19
Flow, Linda	\$715.13
Flow, Michele	\$1,105.20
Flow, Richard M.	\$1,625.29
Flow, Theresa L.	\$1,625.29
Flow, Thomas T.	\$715.13
Flow, Victor V.	\$2,080.38
Flow-Lamy, Kathleen	\$1,235.22
Germeo, Ellen M.	\$1,105.20
Goodwin, Benjamin	\$455.08
Goodwin, Brianna	\$585.11

Goodwin, Dean J.	\$650.12
Goodwin, Mary	\$650.12
Ham, Jennifer	\$1,040.19
Hinkley, Alexander	\$2,015.36
Hinkley, Alexander F.	\$845.15
Hinkley, Kevin	\$845.15
Hinkley, Kim A.	\$1,365.25
Hinkley, Roxann	\$1,430.26
Hinkley, Tracy Ann	\$715.13
Hinkley-Maier, Alexis	\$260.05
Hinkley-Maier, Tyler John	\$260.05
Hooker, Kelly	\$780.14
Horst, Brian E	\$1,365.25
Horst, Georgie	\$1,365.25
Horst, Vernon	\$1,040.19
Hundley, Jennie	\$1,105.20
Hundley, Paul	\$1,885.34
Hundley, Tanya	\$2,015.36
Hundley, Toni Ann	\$1,105.20
Iannone, George	\$845.15
Knapp, Gary	\$780.14
Kuhn, Leo F.	\$1,365.25
Kuhn, Ruth Anne	\$1,365.25
Lawrence, Norma H.	\$1,495.27
Lipiec, Stefanie	\$715.13
Longobardi, Maureen	\$910.16
Lusk, Angeline G.	\$1,040.19
Lutz, Cody J.	\$650.12
Lutz, Dorothy A.	\$910.16
Mandracchia, Leslie	\$1,755.32
McAllister, Barbara	\$1,040.19
McAllister, Margaret	\$1,885.34
Miles, Jennifer	\$1,430.26
Miles, Mary Ellen	\$1,820.33
Miles, Rebecca	\$1,430.26
Nenni, Carolyn M.	\$1,105.20
Nenni, Richard A.	\$1,105.20
Northern, Ben J.	\$910.16
Passarell, Lori	\$650.12
Passarell, Dale	\$650.12

Pignataro, Luanne	\$845.15
Press, Dave	\$780.14
Press, Ruth	\$845.15
Probst, Terry	\$1,235.22
Roberts, Amanda	\$780.14
Roberts, William E.	\$715.13
Saul, Andrew W.	\$1,300.23
Saul, Helen F.	\$780.14
Schubmehl, Bailey A	\$975.18
Schubmehl, Robyn C.	\$1,105.20
Schubmehl, Stephen F.	\$975.18
Schubmehl, Stephen F. Jr.	\$1,105.20
Schubmehl, Steven T.	\$1,040.19
Smith, Steven R.	\$1,170.21
Swanger, Dana	\$585.11
Swanger, Jamie	\$585.11
Swanger, Kenneth	\$780.14
Swanger, Roxanne	\$780.14
Thomas, Jessica	\$975.18
Thomas, John	\$1,560.28
Trupo, Anita	\$2,925.53
Trupo, Francis P.	\$2,730.49
Trupo, Thomas S.	\$2,080.38
Valsente, Christy H.	\$910.16
Waite Renner, Deborah	\$1,430.26
Waite, Hannah	\$910.16
Waite, Olivia	\$910.16
Welch, Jennifer	\$910.16
Weldon, Emily C.	\$1,365.25
Wharram, Donald	\$780.14
Wharram, Jane	\$845.15
Wharram, Jonathan	\$585.11
Wharram, Nicolus	\$585.11
Wharram, Sarah	\$520.09
Wheeler-Smith, Elizabeth	\$1,040.19
Wheeler-Smith, Emily	\$910.16
Wheeler-Smith, Jennifer	\$780.14
Wheeler-Smith, Rebekah	\$1,170.21
Williams, Brittney	\$845.15
Williams, Vincent	\$1,040.19
	\$139,450.14

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report, Recommendation and Order be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report, Recommendation and Order must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report, Recommendation and Order in accordance with the above statute, Fed.R.Civ.P. 72(b) and Local Rule 72.3(a)(3).

The district judge will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but were not presented to the magistrate judge in the first instance. See, e.g., *Patterson-Leitch Co. v. Massachusetts Mun. Wholesale Electric Co.*, 840 F.2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 72.3(a)(3) of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." Failure to

comply with the provisions of Rule 72.3(a)(3), or with the similar provisions of
Rule 72.3(a)(2) (concerning objections to a Magistrate Judge's Report, Recommendation
and Order), may result in the District Judge's refusal to consider the objection.

The Clerk is hereby directed to send a copy of this Report,
Recommendation and Order to the attorneys for the parties.

SO ORDERED.

Dated: Buffalo, New York
August 21, 2013

S/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge